2170.

SUPREME COURT OF THE UNITED STATES.

No. 169.

ERICH CHRISTIAN LUDWIG GRUNER, CLAIM'T OF THE SCHOONER FAIRY, HER TACKLE, &c., APPL'T,

vs.

THE UNITED STATES.

APPEAL FROM DISTRICT COURT U. S. FOR TEXAS.

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Gideon & Co., Printers.

UNITED STATES OF AMERICA,
District of Texas.

Be it remembered, that there was begun and holden in the city of Galveston, on the second Monday of February, A. D. eighteen hundred and forty-eight, a district court of the United states, in and for the district of Texas, for the hearing and determining of admiralty causes. Present the hon'le John C. Watrous, judge; James H. Cocke, marshal; and Thomas Bates, clerk.

Libel filed 20th Nov., 1847, at 11 o'clk., a. m. Writ of attach't and monition issued same day, returnable 2d Monday of Dec'r next.

THOS. BATES, *Clerk.*

United States of America, district of Texas, district court, November term, 1847.

UNITED STATES
vs.
SCHOONER FAIRY, &c. } In admiralty.

To the honorable John C. Watrous, judge of the district court of the United States, for the district aforesaid.

Be it remembered, that on this the twentieth day of November, in the year of our Lord eighteen hundred and forty-seven, before the honorable John C. Watrous, judge as aforesaid, comes George William Brown, esquire, attorney of the United States for the aforesaid district of Texas, and in the name and behalf as well of the United States as of Hiram G. Runnels, esquire, collector of customs for the United States at the port of Galveston, in the said district, and of all other persons concerned, propounds and gives the said judge to understand and be informed, that on the nineteenth day of November, in the year aforesaid, at the said port of Galveston, in the said district of Texas, on waters navigable from the sea by vessels of ten or more tons burthen, and within the admiralty and maritime jurisdiction of the United States, the said Hiram G. Runnels, collector as aforesaid, by Tipton Walker, esquire, his lawful deputy, did seize a certain vessel, called the Fairy, the same being a schooner of fifty-three and $\frac{47}{95}$ tons burthen, or thereabouts, and more particularly described in her certificate of registry, No. 48, issued at the port of New Orleans, in the collection district of Mississippi, on the fifteenth day of July, in the year of our Lord eighteen hundred and forty-six, together with the tackle, apparel, and furniture, of and belonging to the said vessel, and now hath the same in his custody, within the said district of Texas, and being forfeited to the United States for the causes hereinafter mentioned, to wit:

First. For that heretofore, to wit, on or before the fifteenth day of

July, in the year of our Lord eighteen hundred and forty-six, and since the first day of April, in the year of our Lord seventeen hundred and ninety-three, one Old. Cramer, of the city of New Orleans, and State of Louisiana, the more exact description of whose name is to the said attorney unknown, acting as agent and attorney in fact for Gruner, and Charles William Fruh, did purchase for and on account of the said Gruner and Fruh the said vessel and schooner Fairy, together with her tackle, apparel, and furniture, the same then being a registered vessel of the United States, and being and lying at the said port of New Orleans, in the said collection district of Mississippi, more than fifty miles distant from the collection district of Galveston.

That subsequently to such purchase the said Cramer, acting as aforesaid, did apply to David O. Hinks, then being deputy collector of the customs of the United States for the collection district of Mississippi, to proceed to the registering of the said vessel and schooner Fairy, in accordance with the provisions of the act of the Congress of the United States in such case provided; and did then offer and profess to comply, on behalf and in the stead of the said Gruner and Fruh as owners thereof, with the requisites prescribed by the said act.

That the said Cramer, acting as aforesaid, did then, to wit, on or before the said fifteenth day of July, and since the said first day of April, in the years aforesaid, and at the port of New Orleans aforesaid, professing and appearing to comply with the said requisites so prescribed, take and subscribe a certain oath, before the said Hinks, then being deputy collector as aforesaid, which said oath was duly administered to him, the said Cramer, by the said Hicks, wherein and whereby he, the said Cramer, acting as aforesaid, did swear that he was, at the time of taking said oath, agent for the owners of the said vessel and schooner Fairy, and that he had bona fide purchased the same for the said Gruner and Fruh, as owners thereof; and that, moreover, the said Gruner and Fruh were, to the best of the knowledge and belief of him, the said Cramer, the true and lawful owners of the said vessel and schooner, and residing at Galveston aforesaid, in the said State and district of Texas; and that, moreover, the said Gruner and Fruh were citizens of these United States; and that, moreover, the said vessel and schooner Fairy was, at the time of taking said oath, the entire property of citizens of these United States; and that, moreover, no subject or citizen of a foreign prince or state was directly or indirectly, at the said time, by way of trust, confidence, or otherwise, interested in the said vessel and schooner, or in the profits and issues thereof.

Whereas, in truth and in fact, as he, the said Cramer, then and there well knew, he, the said Cramer, had not so purchased the said vessel and schooner Fairy, bona fide or in good faith, but with the intent to defraud and injure the United States, and to violate and evade the laws thereof; and whereas, also, the said Gruner, as he, the said Cramer, then and there well knew, did not, at the time of taking said oath, reside at Galveston aforesaid, but in a foreign country, and was there acting as partner and agent in and for a house professing to be composed of citi-

zens of the United States, and doing business within the same. And whereas, also, as he, the said Cramer, then and there well knew, neither the said Gruner nor the said Fruh was then, at the time of taking the said oath, nor ever before, a citizen of these United States; and whereas, also, as he, the said Cramer, then and there well knew, the said vessel and schooner Fairy was not, at the time of taking said oath, the entire property of citizens of the United States; and whereas, also, as he, the said Cramer, then and there well knew, the said Gruner as well as the said Fruh, being at the time of taking said oath directly interested in the said vessel and schooner Fairy, and in the profits and issues thereof, was then a subject and citizen of a foreign state.

All of which acts, pretences, and false oaths and allegations, on the part of the said Cramer, were and are contrary to the statute of the United States in such case provided, the same being known as statute the second, chapter the first, of the second Congress of these United States, and entitled "An act concerning the registering and recording of ships or vessels."

Second. For that, moreover, the said vessel and schooner Fairy, the same being a registered vessel of the United States, was heretofore, to wit, on or before the fifteenth day of July, in the year of our Lord eighteen hundred and forty-seven, and since the first day of April, seventeen hundred and ninety-three, sold and transferred in whole to the said Gruner and Fruh, each and both the said Gruner and Fruh then being citizens and subjects of a foreign State, and such sale and transfer was not made known in the manner directed by the act of the Congress of the United States in such case provided, contrary to the form of the statute in such case provided, the same being known as statute the second, chapter the first, of the second Congress of the United States, and entitled "An act concerning the registering and recording of ships or vessels."

Third. For that, moreover, the said vessel and schooner Fairy, the same being a registered vessel of the United States, was heretofore, to wit, on or before the fifteenth day of July, in the year of our Lord eighteen hundred and forty-six, and since the first day of April, in the year of our Lord seventeen hundred and ninety-three, sold and transferred, in part, to the said Gruner, he being then a citizen and subject of a foreign State, and a foreigner; and the said sale and transfer was not made known in the manner directed by the act of the Congress of the United States in such case provided, contrary to the form of the statute in such case provided, the same being statute the second, chapter the first, of the second Congress of the United States, and entitled "An act concerning the registering and recording of ships or vessels."

Wherefore the said attorney, on behalf of the United States of America, and of all others interested herein, prayeth the consideration and order of this honorable court in the premises, and a warrant of arrest in due form against the said vessel and schooner Fairy, her tackle, apparel, and furniture, together with a monition and notice, setting forth such arrest, and warning and requiring all persons interested in the same to

appear before this honorable court, on the third Monday of December next ensuing, at Galveston aforesaid, to show cause why the same should not be forfeited as hereinafter prayed; and that all due proceedings being had in the premises, the said vessel and schooner Fairy, together with her tackle, apparel, and furniture, may be and remain forfeited to the use of the said United States, and be condemned by the definitive sentence and decree of this honorable court to be so forfeited, and the proceeds therefrom to be distributed, according to the statutes in such case made and provided.

GEO. WM. BROWN,
United States Attorney for the district of Texas.
By WM. G. HALE.

Monition issued, 20th November, 1847.

UNITED STATES OF AMERICA,
District of Texas.

The President of the United States of America, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

Whereas a libel hath been filed in the district court of the United States, for the district of Texas, on the 20th day of November, in the year of our Lord one thousand eight hundred and forty-seven, by Geo. W. Brown, attorney of the United States for the said district, on behalf of the United States of America, against the schooner Fairy, her tackle, apparel, and furniture, for reasons and causes in said libel mentioned, and praying the usual process and monition of said court in that behalf to be made, and that all persons interested in the said schooner, her tackle, apparel, and furniture, may be cited, in general and special, to answer the premises, and all due proceedings being had that the said schooner, &c., may, for the causes in the said libel mentioned, be condemned, and the proceeds thereof distributed according to law.

You are, therefore, hereby commanded to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned as forfeited, and the proceeds distributed according to the prayer of the said libel, that they be and appear before the said court, to be held in and for said district of Texas, on the second Monday of December next, at the city of Galveston, then and there to interpose a claim for the same, and to make their allegations in that behalf; and what you shall have done in the premises you then and there make return thereof, together with this writ.

Witness the honorable John C. Watrous, judge of said court, at the city of Galveston, this 20th November, A. D. 1847, and sev-
[SEAL.] enty-second year of the independence of the United States of America.

THOS. BATES, *Clerk.*

Marshal's return.

Received 20th November, 1847, and executed same day, by serving

the master in person with a true copy of this monition, and also causing publication to be made, by publication—the Civilian and Gazette, a paper printed and published in the city of Galveston, for fourteen days, and by sticking the same at the court-house door of the United States district court-house, in the city of Galveston, for fourteen days previous to return day thereof.

JAS. H. COCKE, *Marshal.*
By H. B. MARTIN, *Deputy Marshal.*

Attachment issued, 20th November, 1847.

UNITED STATES OF AMERICA,
District of Texas.

The President of the United, to the marshal, or any of his lawful deputies, of the district of Texas, greeting:

You are hereby commanded to seize and attach the schooner Fairy, her tackle, apparel, and furniture, libelled against this day by the United States, for a violation of the revenue law, and her safely keep, so you have her before the honorable the United States district court, at a court to be holden in and for the district of Texas, at the city of Galveston, on the second Monday of December next.

Witness the honorable John C. Watrous, judge of said court, and seal of court, at the city of Galveston, this 20th day of No-
[SEAL.] vember, A. D., 1847, and seventy-second year of the independence of the United States of America.

THOS. BATES, *Clerk.*

Marshal's return.

Received 20th November, 1847. On same day attached the schooner Fairy, and have her now in custody.

JAS. H. COCKE, *Marshal.*
By H. B. MARTIN, *Deputy Marshal.*

20th December, 1847.

UNITED STATES
vs.
SCHOONER FAIRY, &c.

In this case, upon motion of the attorney of the United States, proclamation was made by order of the court, and no person appearing to claim said schooner, her tackle, apparel, and furniture, according to the rule of this court in such case made, the said attorney then moved the court to pronounce final decree of default, condemning the said schooner, her tackle, apparel, and furniture, as forfeited to the United States; which motion was overruled by the court, and further time given absent parties to intervene and make claim.

28th December, 1847.

UNITED STATES
vs.
SCHOONER FAIRY, &c.

On this day E. Gruner, by his agent, presented his claim and answer

to the court, together with a bond as required by rule of court, and a translated copy of the power of attorney of his said agent; and the attorney for the United States waiving his objections thereto, the same was ordered to be filed.

Affidavit filed 28th December, 1847.

THOS. BATES, *Clerk*.

United States district court, district of Texas.

The Schooner FAIRY, &c., ads. } The UNITED STATES.

GALVESTON COUNTY, ss.

John William Jockusch, of said county, being duly sworn, says that Erich Christian Ludwig Gruner, by whom and on whose behalf the claim is made in the above cause, is the true and bona fide owner of the same, and that no other person is the owner thereof; and deponent further says, that Jokusch, Frederich & Co., or either the said Jockusch or Frederich, are duly authorized to put in said claim in the above suit or cause by the said owner thereof.

JOHN WILLIAM JOCKUSCH.

Sworn and subscribed before me, this 27th day of December, 1847.

THOS. BATES, *Clerk*.

Translation of power of attorney filed 28th December, 1847.

THOS. BATES, *Clerk*.

Translation.

Power of Attorney.

I, the undersigned, Erich Christian Ludwig Gruner, residing at this place, partner of the commercial house, Gruner & Fruh, in Galveston, Texas, grant herewith, for myself and my heirs, to Messrs. Jockusch, Frederich & Co., residing at the last-named place, power of attorney, to represent me in all and each matter relating to my said establishment at Galveston, in such a way that it shall be looked upon as if all what the same may accordingly undertake or neglect have myself done or neglected to do. It is my wish in particular, that my attorneys in fact represent me opposite to Mr. Charles William Fruh, partner of the commercial firm of Gruner & Fruh, that they use all rights which behoove me, or which I may possess hereafter; and again to notify the last named gentleman that it is my intention to withdraw immediately from the firm of Gruner & Fruh, and to use such measures as may be necessary for an arrangement of division between myself and Mr. Charles William Fruh, or to use such measures as may be deemed efficient or necessary, and to carry the same through.

The above stated authority shall be understood in its greatest extent, and nothing shall be therefrom excepted, if the same is even not specially expressed here; and for example's sake only do I mention that Messrs. Jockusch, Frederick & Co., in my name and for my interests, may enter into negotiations with Mr. Fruh out of court, and, if thought advisable, may make all arrangements to nominate arbitrators for me, before whom, or in the courts of justice, or such other tribunals of whatsoever name for me to act as plaintiff or defendant, for me to act and plead, to make agreements, procure document[s], or demand their delivery, to put to oath, arrest, or to take whatever safety measure, and to prosecute the same, to prepare and liquidate interests, damages, and expenses, to examine books and accounts, correct errors, and accept when corrected, and altogether to carry each and all actions into execution which in their opinion may advance my interest, and which I might do in any relation myself.

The liquidation of the to be disannulled commercial house, Gruner & Früh, shall be conducted by my agents and attorneys in fact in the above named way, or in such other serviceable manner it may be, amicably or by compulsion, to guard the same, and for me alone conduct or assist to conduct, and also at such time to represent my rights, without all and any restriction. For the same reason they shall receive all sums or debts which Mr. Charles William Fruh, or other persons, are now indebted to me, or which may hereafter become indebted to me, and to give receipts in full for the same, if necessary; to receive as payment for the goods, lots, houses, and lands, and to put the same under my name, and again to resell, and also to procure, when thought necessary, in one or the other respect, all forms or formalities. As it may be requisite, or as it might be, as well for me, and also especially besides Mr. Früh, opposite to other persons to be represented in other relation or respect, therefore I do declare, for the avoidance of each and all misunderstandings, that the above stated power of attorney, given to Messrs. Jockusch, Frederich & Co., is not limited to any special relation or circumstance, place or person, but in so far as my reference to the many times named house of Gruner & Früh, direct or indirect, may come in question, is to be understood entire general.

Can or will one of the partners in the house of Jockusch, Frederich & Co. not accept this present power of attorney altogether, or in single cases, then shall such other partner, consequently either Mr. J. W. Jockush, or Mr. Jul. Frederich, have the same alone; and I do besides this give the authority to my agents and attorneys in fact to transfer to others, and namely to attorneys and counsellors, this power of attorney in its whole extent or behoofs to single actions, and they shall act according to their best knowledge and conscience, or to his best knowledge and conscience.

All expenses, costs, and advances, which the same may have in consequence of this power of attorney, I will remit without delay; in at-

testation of which I have signed and attached my seal to the present document.

So done, Bremen, the 25th day of May, 1847.

[SEAL.] (Signed) E. CHR. L. GRUNER.

N. 6726.

We, the undersigned, notary publics of Bremen, Dr. Emil. Meinertzhagen and Frederick Ernst Ludwig Wilmans, do herewith attest that Erich Christian Ludwig Gruner, merchant, residing at the Rampart, No. 56, has, after the words "lots and houses," which are on the third page from the top, at the beginning of the seventh line, [and which] have been added before us, after reading and ratification, acknowledged that he has signed the same with his own hand.

Done, Bremen, the twenty-fifth day of May 1800 forty-seven.

E. MEINERTZHAGEN,

[SEAL.] *Notary Dr.*

F. WILMANS, *Notary.*

[SEAL.]

Copy.

Consulate of the United States of America.

I, Henry William Böhme, vice-consul, acting for Wm. H. Robertson, consul of the United States of America for the port of Bremen, do here certify, that Doctor Emil. Meinertzhagen and Frederich Ernst Ludwig Wilmans, who have signed the preceding certificate, are public notaries of the city, by lawful authority duly sworn and admitted.

Witness my hand and the seal of this consular office at Bremen, this twenty-fifth day of May, anno domini eighteen hundred and [SEAL.] forty-seven, and in the 71st year of the independence of the United States of America.

H. W. BÖHME,

U. S. Vice Consul.

Claim and answer of Erich Christian Ludwig Gruner, filed 28th December, 1847.

THOS. BATES, *Clerk.*

UNITED STATES OF AMERICA,
District of Texas, ss.

District court, fall term, 1847.

The Schooner FAIRY, her tackle, apparel, furniture, &c., ads.
THE UNITED STATES.

The claim and answer of Erich Christian Ludwig Gruner to the libel

filed on the 20th day of November, in the year of our Lord one thousand eight hundred and forty-seven, by George William Brown, esq., attorney of the United States for the district of Texas, against the schooner Fairy, her tackle, apparel, and furniture, in the said libel in this behalf mentioned.

This claimant, not acknowledging all or any of the matters and things alleged by the said George William Brown, esq., on behalf of the said United States, in the libel filed in this cause, and now and at all times hereafter, saving and reserving to himself all and all manner and benefit and advantage of exception, that can or may be had or taken to the errors or insufficiencies in the said libel contained, and the right to put in and take such other and further claims and allegations as he may be advised, says that he has an equitable lien upon the said schooner Fairy, her tackle, apparel, and furniture, and every part and parcel thereof, to the full amount of their value, and that such lien existed at the time of the filing of the said libel, and that the claimant is well entitled to be protected in the said lien upon the said schooner Fairy, her tackle, apparel, and furniture, mentioned in the said libel, and every part thereof; and this claimant denies that the said schooner Fairy, her tackle, apparel, and furniture, became forfeited to the United States in manner and form in the said libel in that behalf alleged, so as in any manner to destroy or impair the said claim and lien of this claimant upon the said schooner Fairy, her tackle, apparel, and furniture; because he says:

That heretofore, to wit, on or about the month of September, A. D. one thousand eight hundred and forty-five, this claimant, who is a citizen of, and resides in the Free and Hanse town of Bremen, in Europe, and Charles Wm. Früh, who at the time aforesaid was, and is, a citizen of Texas, now in the United States of America, being desirous of establishing a mercantile and commercial house in the city of Galveston, in the State of Texas aforesaid, for the purchase and sale of produce and merchandise, entered into an agreement of co-partnership in writing, at Bremen aforesaid, and which said agreement was signed and executed by this claimant and the said Charles Wm. Früh, at Bremen aforesaid; and by which said agreement, amongst other things, it was stipulated and provided that the business of the purchase and sale of produce and merchandise should be opened in the said city of Galveston, and prosecuted and carried on by this claimant and the said Früh; that it was further provided in said agreement that said co-partnership should continue for the term of six years, unless it was sooner determined or ascertained that the prosecution of said business was attended with material losses, or not attended with the success expected from it; in which case it was provided that the said partnership concern should go into liquidation and be closed up; that by the terms of said contract the business of the said firm was restricted to the lawful prosecution of commercial and mercantile pursuits; and that, also, the partner advancing capital in the said co-partnership business should receive interests on the same, and that the expenses of the said business should

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be equally borne, the profits equally divided, and the losses equally sustained, by each of the said co-partners, after paying the expenses of conducting the said business; the said Früh receiving twelve hundred dollars per year as a salary for his services; and which said contract this claimant believes is in the hands and possession of the said Charles Wm. Früh, but which this claimant cannot immediately procure.

And this claimant further answering says, that it was agreed upon, and arranged, at the time of entering into the said co-partnership agreement, that the said house of "Gruner & Früh" should be opened at Galveston aforesaid, by the said Charles Wm. Früh; that the said Früh should be, and remain, the resident and acting partner in the said business at Galveston aforesaid, whilst it was contemplated that your petitioner should remain at Bremen aforesaid; that at the time of the said co-partnership agreement the said Früh was a man of very little, if any, property or capital; and that it was expected and so agreed upon, and arranged, that this claimant should advance the whole capital employed or made use of in the prosecution of the said co-partnership business; and that this claimant did so arrange matters that provisions were made with this claimant's correspondents and business connexions in the United States, and as this claimant believes exclusively with those of New York and New Orleans, that the said Früh was authorized and empowered, by and through the means and credit of this claimant, by way of bills, drafts, checks, and letters of credit on the said correspondents and business connexions of this claimant, to draw for funds, which, in connexion with the money advanced by this claimant to said Früh, were fully ample for all the purposes necessary, or in any other manner embraced in the motives or designs entertained or contemplated by this claimant and the said Früh in the formation of the said co-partnership.

And this claimant further answering says, that on or about the month of January, A. D. one thousand eight hundred and forty-six, the said Fruh, as this claimant is informed and believes, opened the said house of Gruner & Früh at Galveston aforesaid, and commenced business in the name of the said firm; that about that time, or a little in advance of it, but in anticipation of the said business, the said Früh commenced drawing on this claimant's said business correspondents in the United States, by virtue of the said credits opened by your petitioner for the benefit of the said firm of "Gruner & Früh," for funds, which this claimant provided, and continued to provide, from his own individual means, up to about the twenty-eight day of May, A. D. one thousand eight hundred and forty-seven; and that during the period aforesaid this claimant had advanced to the said Früh, from the individual means of this claimant, to be employed in the said business of "Gruner & Früh," the amount, as this claimant believes, precisely of thirty-two thousand and one hundred dollars, United States currency, all of which, as this claimant has been informed and believes, was received by the said Früh during the time aforesaid; and this claimant avers that he made the said advances of capital to the said Früh at his, the said Fruh's, request, under the full confidence, expectation, and belief, on

the part of this claimant, that the said Früh would employ the same providently and lawfully, and to advantage and profit in the business contemplated by the said parties in the formation of the said co-partnership.

And this claimant further answering says, that the said Früh, instead of establishing the said mercantile house at Galveston, on the plan and for the purposes contemplated in the formation of the said co-partnership, and expressly understood by the aforesaid parties, and agreed upon by them, commenced a small retail business of goods, wares, and merchandise in the name of "Gruner & Früh," and to a very small extent embracing in the said business as aforesaid contemplated and agreed upon; but, on the contrary, and in direct violation of the said co-partnership agreement, the said Früh wrongfully and fraudulently invested a large portion of the aforesaid funds, advanced to him by this claimant, in real estate, in the said State of Texas, and took conveyances therefor in his own name; and also the said Früh, amongst other unauthorized and fraudulent transactions, as this claimant is informed and believes true, the said Früh, at or about the time mentioned in the said libel, employed the said Cramer to purchase the said schooner Fairy, without the knowledge or consent of this claimant; that he, the said Früh, paid the sum of about three thousand dollars for the said schooner, and that in the payment thereof the said Früh, in fraudulent derogation of the rights of this claimant, employed the funds, or proceeds of the funds, advanced by this claimant aforesaid to him; but whether the said schooner was purchased in the name of "Gruner & Früh," or of the said Früh alone, this claimant is not informed except by the said libel, and cannot state; or whether the said Früh intended to violate, or be accessary in the violation of, the laws of Congress as alleged in the said libel, this defendant is not informed and cannot state; but this claimant denies any right, power, or authority on the part of the said Früh to purchase or register the said schooner Fairy, her tackle, apparel, and furniture, in his name, or that he had any authority to empower the said Cramer, mentioned in the said libel, to do so; or any authority to employ the said vessel, in the name of this claimant, in the coasting trade of the United States; or in any manner otherwise to infract the laws of the Congress mentioned or alluded to in the said libel.

And this claimant further answering says, that heretofore, to wit, on or about the 28th day of October, A. D. one thousand eight hundred and forty-seven, this claimant filed his petition in the first judicial district of the State of Texas, in the county of Galveston, against the said Früh, and, among other things, praying that the said co-partnership might be dissolved; that an equitable accounting might be had between this claimant and the said Früh, of and concerning the said co-partnership business, and of and concerning the said several matters stated and set forth in the said petition; that upon such accounting the said Früh might be decreed to pay to this claimant all such sums of money as might be found equitably due from him to this claimant for and on account of the funds as aforesaid advanced by this claimant to said Früh, and

made use of by him; and that such decree might be held and ordered by said court to be a lien upon said co-partnership property, and all other property mentioned in said petition, or intended so to be, as having been purchased with the said funds, or proceeds of the said funds, advanced by this claimant to the said Früh; and that said property might be ordered to be sold to satisfy such decree. And this claimant further says, that said petition further prayed that a writ of sequestration might be issued out of and under the seal of the said court, by means whereof all of the property mentioned in the said petition as having been purchased with the funds, or proceeds of the funds, advanced by this claimant to said Früh, together with the rents, issues, and profits thereof, might be sequestered and safely held to answer any order or decree that might be made by the said court in the premises; and further prayed that said Früh might be enjoined from selling or disposing of any said property as aforesaid mentioned and described in the said petition; and further prayed that, in case it might be deemed necessary by the said court, *that* a receiver might be appointed to collect and take care of the property mentioned in the petition or alluded to, and every part thereof, with such powers as were incident to courts of chancery in like cases, or such powers as should be prescribed by the said court in the premises.

And this claimant further says, that such proceedings were had in the said cause, that afterwards, to wit, on the 30th day of October, A. D. one thousand eight hundred and forty-seven, in accordance with the prayer in the said petition, a writ of sequestration was duly issued in the said cause, commanding the sheriff of the county of Galveston to sequester and take into his possession the said property, mentioned and described in the said petition of this claimant, and safely to keep the same to answer any order or decree of the said court; that afterwards, to wit, on the 16th day of November, A. D. one thousand eight hundred and forty seven, Pryor Bryan, the then sheriff of the said county of Galveston, did levy upon and seize the said schooner Fairy, with her tackle, apparel, and furniture, and did then and there take the same into his possession, in accordance with the mandate of the said writ of sequestration, and by virtue thereof; and that the said schooner Fairy, her tackle, apparel, and furniture, were in the hands and possession of the said sheriff, under the sequestration aforesaid, when seized, or attempted to be seized, by the marshal of the said United States, under the process issued from this court, in pursuance of and by virtue of the libel filed against the said schooner, her tackle, apparel, and furniture; and this claimant denies that the seizure, or attempted seizure, of the said marshal was lawful, or of any effect as against the process in the hands of the said sheriff, and his, the said sheriff's, previous seizure and possession, as herein before stated and set forth.

And this claimant further says, that afterwards, to wit, on the 16th day of December, one thousand eight hundred and forty-seven, at the fall term of the said district court, the honorable James Love presiding, the said court did then and there, on the application of this claimant by

his counsel, and in accordance with the prayer of the said petition, appoint James W. Moore, the clerk of the said district court, a receiver in the said cause of this claimant against the said Fruh, with power to take into his possession and safely keep the property levied upon by the said sheriff of Galveston county by virtue of the said writ of sequestration, and amongst which was the said schooner Fairy, her tackle, apparel, and furniture; and that afterwards, to wit, on the 18th day of December, A. D. one thousand eight hundred and forty-seven, the said receiver did receive from the hands and possession of the said sheriff the property by him as aforesaid sequestered, and amongst the rest the said schooner Fairy, her tackle, apparel, and furniture; and that the said schooner Fairy, her tackle, apparel, and furniture, now are and remain in the custody of the law by order of the said district court and the powers vested in the same; and this claimant will insist that the power and authority of the said State district court is not, and cannot be, superseded by the powers and authority of this honorable court, so as to prevent the said schooner Fairy, her tackle, apparel, and furniture, from being held to answer any decree or order that may be made by the said honorable the State district court upon the petition and proceedings in the said cause of this claimant against the said Früh.

And this claimant will insist, if necessary, upon making the entire proceedings in the suit of this claimant against the said Früh, in the said State district court, a matter of evidence in the defence of his said claim upon the said schooner, her tackle, apparel, and furniture, and every part thereof.

And this claimant further states and shows to this honorable court, that the said Früh is utterly insolvent; that he has squandered and diminished the funds advanced to him by this claimant to the amount, as this claimant believes, of fifteen thousand dollars; that this claimant will be remediless for that amount, and that the whole property secured to satisfy the just demand of this claimant will fall very far short of such satisfaction, including the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof.

Wherefore this claimant prays that the said libel may be dismissed, and that the said schooner Fairy, her tackle, apparel, and furniture, may be restored to the possession of the said receiver, James W. Moore, or permitted to remain in his possession as such receiver, without the intervention of authority from this court to divest him, the said Moore, as such receiver of the same.

ERICH CHRISTIAN LUDWIG GRUNER.
By JOCKUSCH, FREDERICK & CO.,
Co-agents and attorneys in fact.

LORENZO SHERWOOD,
HANDI.. W. WAGNER,
Proctors for claimant.

UNITED STATES DISTRICT COURT, *District of Texas*.

THE UNITED STATES
vs.
THE SCHOONER FAIRY. } In admiralty.

GALVESTON COUNTY, *ss*:

John William Jockusch, of said county, being duly sworn says, that he is one of the agents and attorneys in fact of Erich Christian Ludwig Gruner, the claimant named in the foregoing claim and answer; that he has full power and authority from the said Gruner to put in the said claim and answer as the agent and attorney in fact of the said Gruner. And this deponent further says, that said claimant resides at Bremen, in Europe; that his oath to said claim and answer could not be procured. And this deponent further says, that he is acquainted with most of the material facts set forth in the said answer from personal knowledge, and with the rest of the facts stated in said answer upon information. And deponent further says, that he has heard the foregoing answer by him subscribed as agent read; that he knows the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

JOHN WILLIAM JOCKUSCH.

Sworn and subscribed before me, this 23d day of December, 1847.
THOS. BATES, *Clerk*.

Bond filed 28th December, 1847.
THOS. BATES, *Clerk*.

Know all men by these presents, that we, John W. Jockusch and J. F. Benjamin, of the city and county of Galveston, and State of Texas, are held and firmly bound unto the United States of America, in the sum of two hundred and fifty dollars, lawful money of the said United States, to be paid to the said United States; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-third day of December, in the year of our Lord one thousand eight hundred and forty-seven.

Whereas a libel has been filed in the district court of the United States for the district of Texas, on the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-seven, by George Wm. Brown, esq., attorney for the said United States for the district aforesaid, against the schooner Fairy, her tackle, apparel, and furniture, for reasons and causes in the said libel mentioned, and praying that the same may be condemned as forfeited to the uses in the said libel specified. And whereas, also, a claim has been filed in the said court by Erich Christian Ludwig Gruner, as owner and holder of an equitable lien upon the said schooner, her tackle, apparel, and furniture, to the full value of the same.

Now, therefore, the condition of this obligation is such, that in case the said Gruner shall not support his said claim, if the said John W. Jockusch and J. F. Benjamin, or either of them, or the heirs, executors, or administrators of the said John W. Jockusch and J. F. Benjamin, or either of them, shall pay all such costs, as by reason of his failure to support his said claim he ought to pay, then this obligation to be void, otherwise to remain in full force and virtue.

J. W. JOCKUSCH, [SEAL.]
J. F. BENJAMIN. [SEAL.]

Witness: THOS. BATES.

Motion, filed 3d January, 1848.

THE UNITED STATES
vs.
THE SCHOONER FAIRY, etc. } In admiralty.

District court of the United States, December term, 1847.

And now, after the filing of the claim and answer of Erich Christian Ludwig Gruner, comes into court George William Brown, attorney of the said United States for the district of Texas, and in the above entitled cause here moves the court, that all the matters, facts, and things stated, set forth, and alleged in the libel of the said United States, in this behalf already filed, from the commencement thereof to the end of the third article therein, at the words "ships or vessels," be adjudged and decreed to be taken pro confesso against the said Gruner; and that the court do proceed to hear and determine the said cause upon the said libel, and each part of the said claim and answer, as shall appear sufficient and pertinent.

GEORGE WILLIAM BROWN,
U. S. attorney, dist. Texas.
By WILLIAM G. HALE.

And now again, after the filing of the claim and answer of Erich Christian Ludwig Gruner, comes into court George William Brown, attorney of the said United States for the district of Texas, and here excepts to the sufficiency, in law, of the said claim, and assigns as special cause for such his exception the following, to wit:

That it appears by the claim and affidavit thereto appended, and by the affidavit separately filed, that the claimant pretends to be the sole and bona fide owner of the said schooner Fairy, etc., whereas, it also appears that he is a citizen of a foreign state, and that the said schooner has been registered as a vessel of the United States of America, and that the said claimant, therefore, has not and cannot have any such valid legal interest in the said schooner as will allow him to interpose his said claim.

And the said attorney moves that the said claim be now taken off the files of this court, by reason of the insufficiency thereof, and that

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the court proceed to pronounce a final decree in this cause for want of a claim. GEORGE WILLIAM BROWN,
U. S. attorney, etc.

And now, again, after the filing of the claim and answer of Erich Christian Ludwig Gruner, comes into court George William Brown, attorney of the said United States for the district of Texas, and here excepts to so much of said claim and answer as is contained therein, between the words, "That heretofore, to wit, on or about the month of September," on the second page thereof, and the words, "including the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof," on the last page of the same, for surplusage, irrelevancy, and impertinence, and moves the court that the same be referred to a master, who shall report thereon at a day to be fixed by the court; and the said attorney here *shews* and sets down as special causes for such his exception, the following, that is to say:

First. That all the statements, etc., contained in said claim and answer, from the words first herein before mentioned, to the words, "infract the laws of Congress mentioned or alluded to in the said libel," are intended to establish, and if true, could only establish, that the said Gruner had an equitable right or claim to the said schooner Fairy, etc., which said right or claim has not been adjudged or confirmed as a legal title by any court of competent jurisdiction; and that this court has not, in this cause, and in this way, any power to fix and determine the said equitable right or claim; and that the statements, etc., contained as aforesaid, in said claim and answer, have no sufficient relation to the controversy in the said cause; but are, and ought to be, considered as irrelevant and mere surplusage with respect thereto.

Second. That all the statements, etc., contained in said claim and answer, from the words, "infract the laws of the Congress mentioned or alluded to in the said libel," to the words, "including the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof," are intended to establish, and if true, could only establish, that the said schooner, etc., was at the time of the seizure thereof, as stated in the libel of the United States, in this behalf already filed, in the actual custody and possession of the sheriff of the county of Galveston, in this the State of Texas, under the authority of a certain writ of sequestration issued from the district court of the first judicial district of the said State, for the county aforesaid; and can and could, in no wise, be any defence or answer to the matters and things set forth in the said libel; and that the said statements, etc., contained as aforesaid in said claim and answer, have no sufficient relation to the controversy in the said cause; but are, and ought to be, considered as irrelevant and mere surplusage with respect thereto. GEORGE WILLIAM BROWN,
U. S. attorney, dist. Texas.
By WM. G. HALE.

Agreement filed 7th January, 1848.
THOS. BATES, *Clerk.*

UNITED STATES
vs.
THE SCHOONER FAIRY, etc. } In admiralty.

District court of the United States, at the December term, 1847.

We, the attorney of the said United States for the district of Texas, on behalf of the same, and the attorneys of the claimant in the above entitled cause, Erich Christian Ludwig Gruner, on behalf of said claimant, hereby agree, that the value of the schooner Fairy, her tackle, apparel, and furniture, the same being the property in dispute in the said cause, exceeds the sum of two thousand dollars.

GEORGE WILLIAM BROWN,
Attorney of the United States for the district of Texas.
By WM. G. HALE.
SHERWOOD & WAGNER,
Attys. for claimant.

January 8, 1848.

UNITED STATES
vs.
SCHOONER FAIRY, etc. } Continued.

January 8th, 1848.

PETER PETERS
vs.
Schooner FAIRY, &c.

UNITED STATES
vs.
SAME.

In the first of the foregoing cases, upon motion of the proctor of the libellant therein, it appearing to the court that no monition nor warrant of arrest had therein issued, it was ordered by the court that the second of the above entitled causes, to wit, the United States vs. Schooner Fairy, &c., be continued until the first Monday of February next, in order to give to said libellant time to cause such monition and warrant to be issued and returned. To which order the attorney of the United States excepts.

Amended claim and answer of Erich Christian Ludwig Gruner.
Filed 19th January, 1848. THOS. BATES, *Clerk*.

UNITED STATES OF AMERICA,
District of Texas, ss.
District court, fall term, 1847.

The Schooner FAIRY, her tackle, apparel, furniture, &c.,
ads.
THE UNITED STATES.

The claim and answer of Erich Christian Ludwig Gruner to the libel

filed on the 20th day of November, in the year of our Lord one thousand eight hundred and forty-seven, by George William Brown, esq., attorney of the United States for the district of Texas, against the schooner Fairy, her tackle, apparel, and furniture, in the said libel in this behalf mentioned.

And now comes Erich Christian Ludwig Gruner, who appears by his proctors, Sherwood and Wagner, and who makes claim, through his lawful agents and attorneys in fact, Jockusch, Frederich & Co., and says, that he is the sole owner of an equitable claim and lien upon the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof, to the full amount of the value thereof; and this claimant, as to the said matters set forth in the said first article of the said libel, denies that the said several matters in the said first article in the said libel contained are true, in manner and form as the same are therein stated and set forth; and this claimant also further denies, that the said schooner Fairy, her tackle, apparel, and furniture, or any part thereof, became forfeited to the said United States, in the manner and for the causes stated in the said first article in the said libel in that behalf alleged.

And the said Erich Christian Ludwig Gruner, who appears as aforesaid, and makes claim as aforesaid through his aforesaid agents, says he is the sole owner of an equitable claim and lien upon the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof, to the full extent of their value; and this claimant, as to the said second article in the said libel contained, denies the truth of the allegations therein contained, or that the said schooner Fairy, her tackle, apparel, and furniture, or any part thereof, became forfeited to the said United States, in the manner and for the cause therein mentioned, as in the said second article in that behalf alleged.

And the said Erich Christian Ludwig Gruner, who appears as aforesaid, and makes claim as aforesaid through his aforesaid agents, says he is the sole owner of an equitable claim and lien upon the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof, to the full extent of their value; and this claimant, as to the said third article in the said libel contained, denies the truth of the allegations therein contained, or that the said schooner Fairy, her tackle, apparel, and furniture, or any part thereof, became forfeited to the said United States, in the manner and for the cause therein mentioned, as in the said third article in that behalf alleged.

And the said Erich Christian Ludwig Gruner, who appears as aforesaid, and makes claim as aforesaid through his aforesaid agents, for a further answer as to the first article in the said libel contained, and the several matters therein stated and set forth, says that he, this claimant, not acknowledging all or any of the matters and things alleged by the said George Wm. Brown, esq., on behalf of the said United States, in the libel filed in this cause; and now, and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception that can or may be had or taken to the errors and insuffi-

ciencies in the said libel contained, and the right to put in and make such other and further claims and allegations as he may be advised, says, that he has an equitable lien upon the said schooner Fairy, her tackle, apparel, and furniture, and every part and parcel thereof, to the full amount of their value, and that such lien existed at the time of the filing of the said libel, and that this claimant is well entitled to be protected in the said lien upon the said schooner Fairy, her tackle, apparel, and furniture, mentioned in the said libel, and every part thereof; and this claimant denies that the said schooner Fairy, her tackle, apparel, and furniture became forfeited to the United States in manner and form in the said libel in that behalf alleged; so as in any manner to destroy or impair the said claim and lien of this claimant upon the said schooner Fairy, her tackle, apparel, and furniture; because, he says:

That heretofore, to wit, in or about the month of September, A. D. one thousand eight hundred and forty-five, this claimant, who is a citizen of, and resides in, the Free and Hans town of Bremen, in Europe, and Charles Wm. Früh, who at the time aforesaid was and is a citizen of Texas, now in the United States of America, being desirous of establishing a mercantile and commercial house in the city of Galveston, in [the] State of Texas aforesaid, for the purchase and sale of produce and merchandise, entered into an agreement of co-partnership in writing, at Bremen aforesaid; and which said agreement was signed and *and* executed by this claimant and the said Charles Wm. Früh, at Bremen aforesaid; and by which said agreement, amongst other things, it was stipulated and provided, that the business of the purchase and sale of produce and merchandise should be opened in the said city of Galveston, and prosecuted and carried on by this claimant and the said Früh; that it was further provided in said agreement, that said co-partnership should continue for the term of six years, unless it was sooner determined or ascertained that the prosecution of said business was attended with material losses, or not attended with the success expected from it; in which case it was provided, that the said partnership concern should go into liquidation and be closed up; that by the terms of said contract the business of the said firm was restricted to the lawful prosecution of commercial and mercantile pursuits; and that, also, the partner advancing capital in the said co-partnership business should receive interest on the same, and that the expenses of the said business should be equally borne, the profits equally divided, and the losses equally sustained, by each of the said co-partners, after paying the expenses of conducting the said business—the said Früh receiving twelve hundred dollars per year as a salary for his services; and which said contract this claimant believes is in the hands and possession of the said Charles Wm. Früh, but which this claimant cannot immediately produce.

And this claimant further answering says, that it was agreed upon and arranged at the time of entering into the said co-partnership agreement, that the said house of "Gruner and Früh" should be opened at Galveston aforesaid by the said Charles W. Früh; that the said Früh should be and remain the resident and acting partner in the said busi-

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ness at Galveston aforesaid, whilst it was contemplated that your petitioner should remain at Bremen aforesaid; that at the time of the said co-partnership agreement the said Früh was a man of very little, if any, property or capital; and that it was expected, and so agreed upon and arranged, that this claimant should advance the whole capital employed or made use of in the prosecution of the said copartnership business; and that this claimant did so arrange matters, that provisions were made with this claimant's correspondents and business connexions in the United States, and, as this claimant believes, exclusively with those at New York and New Orleans; that the said Früh was authorized and empowered, by and through the means and credit of this claimant, by way of bills, drafts, checks, and letters of credit on the said correspondents and business connexions of this claimant to draw for funds which, in connexion with the money advanced by this claimant to said Früh, were fully ample for all the purposes necessary, or in any manner embraced in the motives or designs entertained or contemplated by this claimant and the said Früh, in the formation of the said copartnership.

And this claimant further answering says, that on or about the month of January, A. D. one thousand eight hundred and forty-six, the said Früh, as this claimant is informed and believes, opened the said house of Gruner and Früh, at Galveston aforesaid, and commenced business in the name of the said firm; that about that time, or a little in advance of it, but in anticipation of the said business, the said Früh commenced drawing on this claimant's said business correspondents in the United States by virtue of the said credit, opened by your petitioner for the benefit of the said firm of "Gruner & Früh," for funds, which this claimant provided and continued to provide, from his own individual means, up to about the twenty-eighth day of May, A. D. one thousand eight hundred and forty-seven; and that, during the period aforesaid, this claimant had advanced to the said Früh, from the individual means of this claimant, to be employed in the said business of "Gruner & Früh," the amount, as this claimant believes, precisely of thirty-two thousand and one hundred dollars, United States currency; all of which, as this claimant has been informed and believes, was received by the said Früh during the time aforesaid; and this claimant avers, that he made the said advances of capital to the said Früh at his, the said Früh's, request, under the full confidence, expectation, and belief, on the part of this claimant, that the said Früh would employ the same providently and lawfully, and to the advantage and profit in the business contemplated by the said parties in the formation of the said co-partnership.

And this claimant further answering says, that the said Früh, instead of establishing the said mercantile house at Galveston, on the plan and for the purposes contemplated in the formation of the said co-partnership, and expressly understood by the aforesaid parties, and agreed upon by them, commenced a small retail business of goods, wares, and merchandises, in the name of "Gruner & Früh," and to a very small extent embarking in the said business as aforesaid contemplated and agreed

upon; but, on the contrary, and in direct violation of the said co-partnership agreement, the said Früh wrongfully and fraudulently invested a large portion of the aforesaid funds advanced to him by this claimant in real estate in the said State of Texas, and took conveyances therefor in his own name; and, also, the said Früh, amongst other unauthorized and fraudulent transactions, as this claimant is informed and believes true, the said Früh, at or about the time mentioned in the said libel, employed the said Cramer to purchase the said schooner Fairy without the knowledge or consent of this claimant; that he, the said Früh, paid the sum of about three thousand dollars for the said schooner; and that, in the payment thereof, the said Früh, in fraudulent derogation of the rights of this claimant, employed the funds, or proceeds of the funds advanced by this claimant as aforesaid, to him; but whether the said schooner was purchased in the name of "Gruner & Früh," or of the said Früh alone, this claimant is not informed except by the said libel, and cannot state; or whether the said Früh intended to violate, or be accessary in the violation of, the laws of Congress, as alleged in the said libel, this defendant is not informed and cannot state; but this claimant denies any right, power, or authority, on the part of the said Früh, to purchase or register the said schooner Fairy, her tackle, apparel or furniture, in his name, or that he had any authority to empower the said Cramer mentioned in the said libel to do so; or any authority to employ the said vessel in the name of this claimant in the coasting trade of the United States, or in any manner otherwise to infract the laws of the Congress mentioned or alluded to in the said libel.

And this claimant further answering says, that heretofore, to wit, on or about the 28th day of October, A. D. one thousand eight hundred and forty-seven, this claimant filed his petition in the first judicial district of the State of Texas, in the county of Galveston, against the said Früh, and amongst other things praying that the said co-partnership might be dissolved; that an equitable accounting might be had between this claimant and the said Früh, of and concerning the said co-partnership business, and of and concerning the said several matters stated and set forth in the said petition. That upon such accounting the said Früh might be decreed to pay to this claimant all such sums of money as might be found equitably due from him to this claimant, for and on account of the funds as aforesaid advanced by this claimant to said Früh, and made use of by him; and that such decree might be held and ordered by the said court to be a lien upon the said co-partnership property, and all other property mentioned in the said petition, or intended so to be, as having been purchased with the said funds or proceeds of the funds advanced by this claimant to said Früh; and that said property might be ordered to be sold to satisfy such decree.

And this claimant further says, that said petition also further prayed that a writ of sequestration might be issued out of and under the seal of the said court, by means whereof all the property mentioned in the said petition as having been purchased with the funds, or proceeds of funds, advanced by this claimant to said Früh, together with the rents, issues,

and profits thereof, might be sequestered and safely held to answer any order or decree that might be made by the said court in the premises; and further prayed that said Früh might be enjoined from selling or disposing of any of the said property as aforesaid mentioned and described in the said petition; and further prayed, that in case it might be deemed necessary by the said court that a receiver might be appointed to collect and take care of the said property as aforesaid mentioned in the said petition, or alluded to, and every part thereof, with such powers as were incident to courts of chancery in like cases, or such powers as should be prescribed by the said court in the premises.

And this claimant further says, that such proceedings were had in the said cause that afterwards, to wit, on the 30th day of October, A. D. one thousand eight hundred and forty-seven, in accordance with the prayer in the said petition, a writ of sequestration was duly issued in the said cause, commanding the sheriff of the county of Galveston to sequester and take into his possession the said property mentioned and described in the said petition of this claimant, and safely to keep the same, to answer any order or decree of the said court; that afterwards, to wit, on the 16th day of November, A. D. one thousand eight hundred and forty-seven, Pryor Bryan, the then sheriff of the said county of Galveston, did levy upon and seize the said schooner Fairy, with her tackle, apparel, and furniture, and did then and there take the same into his possession in accordance with the mandate of the said writ of sequestration, and by virtue thereof; and that the said schooner Fairy, her tackle, apparel, and furniture, were in the hands and possession of the said sheriff, under the sequestration aforesaid, when seized or attempted to be seized by the marshal of the said United States, under the process issued from this court in pursuance of, and by virtue of the said libel filed against the said schooner, her tackle, apparel, and furniture; and this claimant denies that the seizure or attempted seizure of the said marshal was lawful or of any effect as against the process in the hands of the said sheriff, and his, the said sheriff's, previous seizure and possession as herein before stated and set forth.

And this claimant further says, that afterwards, to wit, on the 16th day of December, one thousand eight hundred and forty-seven, at the fall term of the said district court, the hon. James Love presiding, the said court did then and there, on the application of this claimant by his counsel, and in accordance with the prayer of the said petition, appoint James W. Moore, the clerk of the said district court, a receiver in the said cause of this claimant, against the said Früh, with power to take into his possession, and safely keep, the property levied upon by the said sheriff of Galveston county, by virtue of the said writ of sequestration; and amongst which was the said schooner Fairy, her tackle, apparel, and furniture; and that afterwards, to wit, on the 18th day of December, A. D. one thousand eight hundred and forty-seven, the said receiver did receive from the hands and possession of the said sheriff the property by him as aforesaid sequestered, and amongst the rest the said schooner Fairy, her tackle, apparel, and furniture; and that the said

schooner Fairy, her tackle, apparel, and furniture, now are and remain in the custody of the law, by order of the said district court and the powers vested in the same; and this claimant will insist that the power and authority of the said State district court is not, and cannot be, superseded by the power and authority of this honorable court, so as to prevent the said schooner Fairy, her tackle, apparel, and furniture, from being held to answer any decree or order that may be made by the said honorable the State district court, upon the petition and proceedings in the said cause of this claimant against the said Früh.

And this claimant will insist, if necessary, upon making the entire proceedings in the suit of this claimant against the said Früh, in the said State district court, a matter of evidence in the defence of his said claim upon the said schooner, her tackle, apparel, and furniture, and every part thereof.

And this claimant further states and shows to this honorable court, that the said Früh is utterly insolvent; that he has squandered and diminished the funds advanced to him by this claimant, to the amount, as this claimant believes, of fifteen thousand dollars; that this claimant will be remediless for that amount, and that the whole property secured to satisfy the just demand of this claimant will fall very far short of such satisfaction, including the said schooner Fairy, her tackle, apparel, and furniture, and every part thereof.

Wherefore this claimant prays that the said libel may be dismissed, and that the said schooner Fairy, her tackle, apparel, and furniture may be restored to the possession of the said receiver, James W. Moore, or permitted to remain in his possession as such receiver, without the intervention of authority from this court to divest him, the said Moore, as such receiver, of the same.

ERICH CHRISTIAN LUDWIG GRUNER,
By JOCKUSCH, FREDEKICH [&] CO.,
His agents and attorneys in fact,

LORENZO SHERWOOD,
HANDL. W. WAGNER,
Proctors for claimant.

United States district court, district of Texas, (in admiralty.)

The UNITED STATES
vs.
The Schooner FAIRY, &c.

GALVESTON COUNTY, *ss.*

John William Jockusch, of said county, being duly sworn, says, that he is one of the agents and attorneys in fact of Erich Christian Ludwig Gruner, the claimant named in the foregoing claim and answer; that he has full power and authority from the said Gruner to put in the said claim and answer as the agent and attorney in fact of the said Gruner. And this deponent further says, that said claimant resides at

Bremen, in Europe; that his oath to said claim and answer could not be procured. And this deponent further says, that he is acquainted with most of the material facts set forth in the said answer from personal knowledge, and with the rest of the facts stated in said answer upon information. And deponent further says, that he has heard the foregoing answer, by him subscribed as agent, read, that he knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

JOHN WILLIAM JOCKUSCH.

Sworn and subscribed before me, this 18th day of January, A. D. 1848.

THOS. BATES, *Clerk*.

Motions filed 19th January, 1848.

THOS. BATES, *Clerk*.

The UNITED STATES OF AMERICA
vs.
The Schooner FAIRY, &c.

District court of the U. S., in admiralty.

And now, after the filing of the amended claim and answer of Erich Christian Ludwig Gruner, the attorney of the said United States repeats his first motion in this cause already filed, and here again moves the court that all the matters, facts, and things, set forth and alleged in the separate allegations in the libel of the United States in this behalf already filed from the commencement thereof to the end of the third article therein, at the words ships or vessels, be decreed to be taken pro confesso against the said Gruner, and that the court do proceed to hear and determine the said cause upon the said libel, and such part of the said claim and answer as shall appear sufficient and pertinent.

GEORGE WM. BROWN,
U. S. Attorney, dist. Texas.
By WM. G. HALE.

And now, again, after the filing of the amended claim and answer of Erich Christian Ludwig Gruner, the attorney for the said United States here excepts to the sufficiency of the said amended claim, and assigns, as a special cause for such his preliminary exception, the following, to wit:

That the said claimant now swears and avers that he is the owner of an equitable claim upon the said vessel and schooner Fairy, and seeks to introduce his said claim upon that oath and averment alone; whereas he was bound by law, and by the rule of the Supreme Court of the United States, in such case provided, and by the practice of this

court, to swear and aver that he was the owner of the said vessel and schooner Fairy, &c., and not of any claim or lien thereon.

Wherefore the said attorney here moves the court that the said claim be now taken off the files of this court, by reason of the insufficiency thereof, and that the court proceed to pronounce a final decree herein for want of a claim.

GEORGE WM. BROWN,
U. S. Attorney, dist. Texas.
By WM. G. HALE.

And now again, after filing the amended claim and answer of Erich Christian Ludwig Gruner in the said cause, the attorney of the said United States here repeats his second motion in the cause already filed, and now again excepts to the sufficiency in law of the said amended claim, and assigns, as a special cause for such his preliminary exception, the following, to wit:

That it appears by the claim and affidavit thereto appended, and by the affidavit before separately filed, that the said Gruner pretends to be the sole and bona fide owner of an equitable claim and lien upon the said vessel and schooner Fairy, &c., whereas it also appears that he is a citizen of a foreign State, and an alien to the said United States, and that the said schooner has been registered as a vessel of the said United States; and that the said claimant, therefore, has not and cannot have any such valid interest in the said schooner as will allow him to interfere his said claim.

Wherefore the said attorney here moves the court that the said claim be taken off the files of this court, for reason of the insufficiency thereof; and that the court proceed to pronounce a final decree in the said cause for want of a claim.

GEORGE WM. BROWN,
U. S. Attorney.
By WM. G. HALE.

And now again, after the filing of the amended claim and answer of Erich Christian Ludwig Gruner in the said cause, the attorney of the said United States here repeats his motion already made by the court, and now again moves that the report of the master, as to the surplusage, irrelevancy, and impertinence of certain parts of the said answer therein specified, be allowed by the court, and that the said matters and parts of the said answer be expunged at the cost of the said Gruner.

GEORGE WM. BROWN,
U. S. Attorney, dist. Texas.
By WM. G. HALE.

Stipulation filed 21st Jan'y, 1848.

THOS. BATES, *Clerk.*

First judicial district.

THE STATE OF TEXAS, *Galveston county*.

ERICH CHRISTIAN LUDWIG GRUNER
vs.
CHARLES WILLIAM FRUH.

United States district court, district of Texas, (in admiralty.)

The UNITED STATES
vs.
The Schooner FAIRY, &c.

Whereas a suit has been commenced by the plaintiff, in the first above entitled cause, in the said State district court, against the said defendant therein named, by the filing of a petition therein, and such proceedings were therein had that the said schooner Fairy, her tackle, apparel, and furniture, were sequestered under the process of the said court, and subsequently ordered by a decretal order of the said court into the hands of a receiver, James W. Moore, of Galveston, who, as said receiver, now claims possession of the said schooner, her tackle, apparel, and furniture; and which suit is still depending and undetermined.

And whereas, also, a libel has been filed, in the last above entitled cause, by George Wm. Brown, the attorney of the said United States, for the district of Texas, against the said schooner Fairy, her tackle, apparel, and furniture, and the said schooner, her tackle, apparel, and furniture, have been seized by the marshal of said district, upon a warrant issued upon said libel, which said seizure is claimed to be valid in consequence of an alleged forfeiture of the said schooner, her tackle, apparel, and furniture, to the United States; and whereas the said Gruner appears and makes claim against the said schooner, &c., in the said suit of the United States in the said libel cause; and whereas the said schooner Fairy, her tackle, apparel, and furniture, now lying in the port of Galveston are in a perishable condition, and in all probability would be greatly deteriorated pending the litigation in the above entitled cause.

Therefore, it is hereby stipulated by the attorneys and proctors in the last above cause, that upon the attorney for the United States procuring an order from the court for the sale of the said vessel, her tackle, apparel, and furniture, and upon a similar order being obtained from the judge of the State district court, that then, and in such case, the said schooner Fairy, her tackle, apparel, and furniture, may be sold by the marshal of the said district of Texas, with the assistance and assent of the said James W. Moore, receiver as aforesaid, and the proceeds of the said sale paid into the registry of the said United States court, to abide the ultimate litigation of the above entitled suits or causes; it is further stipulated that this agreement, nor any proceedings had in pursuance of the same, are not to change, alter, or prejudice the rights of either or any of the parties in the above causes, nor the rights of the

ministerial officers of either of the said courts, or of the said receiver, but that the same shall be and remain the same as though this stipulation had not been entered into, the whole object of the said stipulation being to prevent a deterioration of the said property herein mentioned from and in consequence of its perishable condition.

Dated January 20th, 1848.

SHERWOOD & WAGNER,
Att'ys for Gruner in the State district court, and proctors for him in the above suit of the United States against the said schooner Fairy, etc.,
GEO. WM. BROWN,
U. S. attorney for the district of Texas.
By WM. G. HALE.

Motion for sale.

District court of the United States.

UNITED STATES
vs.
THE SCHOONER FAIRY, etc. } In admiralty.

And now the attorney of the said United States moves the court that the said schooner Fairy, her tackle, apparel, and furniture, be sold, pending this suit, and that the proceeds of the sale be paid into the registry of this court to abide the event of this suit; and that, in pursuance of the order of the court to this end made, an order of sale issue to the marshal of the said district, commanding and directing him to expose the said schooner, etc., at public sale, at 10 o'clock, of the morning of Thursday, the third day of February next, and to give due notice of such sale by advertisement in the Civilian and Galveston Gazette.

And the said attorney, in support of his motion, here presents to the court the affidavit of Highland, this day made.

GEORGE WM. BROWN,
U. S. attorney, district Texas.
By WM. G. HALE.

The above motion is hereby allowed.

JOHN C. WATROUS,
Judge, &c.

Highland's affidavit.

United States district court, district of Texas.

THE UNITED STATES
vs.
THE SCHOONER FAIRY, &c. }

GALVESTON COUNTY, *ss.*

John Highland, of this county, being duly sworn, says that the schooner Fairy, her tackle, apparel, and furniture, now lying in the

port of Galveston are in a perishable condition, and, in the opinion of deponent, ought to be sold, and the proceeds paid into the registry of this court.

And deponent further says, that in his belief the said schooner would soon become worm-eaten, and her tackle, &c., very much injured by exposure, if suffered to lie in the condition she now is; and deponent fully believes it would be for the benefit of all parties concerned to have the said vessel, &c., sold as aforesaid; and deponent further saith not.

J. HIGHLAND.

Sworn and subscribed before me, this 21st day of January, 1848.

THOS. BATES, *Clerk*.

Order of sale issued 21st January, 1848.

UNITED STATES OF AMERICA, *district of Texas*.

The President of the United States of America, to the marshal or any of his lawful deputies of the district of Texas, greeting:

You are hereby commanded that, upon the third day of February next, at 10 o'clock, A. M., of said day, you proceed to sell, to the highest bidder, for cash, the schooner Fairy, her tackle, apparel, and furniture, after giving due notice of such sale in the Civilian and Galveston Gazette, a newspaper printed and published in the city of Galveston, and the proceeds of said sale you pay into the registry of this court, to abide the event of the suit of the United States vs. The Schooner Fairy, &c.

Witness the honorable John C. Watrous, judge of said court, and seal of court, this 21st day of January, A. D. 1848, and the [SEAL.] seventy-second year of the independence of the United States of America.

THOS. BATES, *Clerk*.

Marshal's return.

Received 21st January, 1848, and on the same day I advertised the within named schooner Fairy, her tackle, apparel and furniture, for sale, to the highest bidder, for cash, in front of the United States district court-house, in the city of Galveston, on the 3d day of February, 1848, between the hours of 10 o'clock, A. M., and 4 o'clock, P. M., by publication made in the Civilian and Galveston Gazette, a newspaper printed and published in the city of Galveston; and on the said 3d February I proceeded to sell the said schooner, &c., to the highest bidder, for cash, and the same was struck off to An. Moore and S. B. Lewis, they being the highest bidders for the same, for the sum of eight hundred and fifty dollars, which amount was paid over to the clerk.

JAS. H. COCKE, *U. S. Marshal*.

By H. B. MARTIN, *Dep'y Marshal*.

FRIDAY, 17*th March*, 1848.

UNITED STATES
vs.
SCHOONER FAIRY, etc.

This day came the parties, by their proctors, and [on] the motion to take the claim of Gruner from the files of the court, after hearing argument of counsel, and upon the mature and deliberate consideration, it is ordered and adjudged, that said claim be taken from the files of said cause.

Motion.

DISTRICT COURT OF THE UNITED STATES,
District of Texas.

UNITED STATES
vs.
The SCHOONER FAIRY, etc. } In admiralty.

And now, George William Brown, attorney of the said United States, for the district of Texas, on behalf of the libellants, moves the court, after the claim of Erich Christian Ludwig Gruner has been taken off the files of this court, to pronounce a final decree of forfeiture, as to the said schooner Fairy, her tackle, apparel, and furniture, and to order the proceeds of the sale, now in the registry of this court, to be disposed of according to law.

GEORGE WM. BROWN,
U. S. attorney, dis't Texas.
By WM. G. HALE.

Bill of charges.

UNITED STATES
vs.
SCHOONER FAIRY. } Bill of charges.

For amount of charges accruing previous to the 28th, Dec., 1847:

Wharfage,	42 days, at $2 00	- -	$84 00	
Keeping vessel,	42 " 2 50	- -	105 00	
				$189 00

For charges accruing from the 28th Dec. to 3d February, 1848:

Wharfage,	37 days, at $2 00	- -	$74 00	
Keeping vessel,	37 " 2 50	- -	92 50	
				166 50
				$355 50

The above account allowed, and the clerk will pay out of the proceeds of the registry the above sum of three hundred and fifty-five dollars and fifty cents, to the marshal of the United States for the district of Texas.

WATROUS, *U. S. Judge.*

2285

March 21*st*, 1848.

UNITED STATES
vs.
The SCHOONER FAIRY, &c.

On this day the attorney of the United States, on behalf of the libellants, in the above entitled cause, moved the court that a final decree of forfeiture be made and pronounced against the said schooner Fairy, her tackle, apparel, and furniture, as in the libel claimed; and thereupon the claim of Erich Christian Ludwig Gruner having been taken off the files of this court, and no other claimant having appeared or intervened, it is now ordered and decreed by this court, that the said schooner Fairy, her tackle, apparel and furniture, be condemned and forfeited to the said United States, and that the remaining portion of the proceeds of the sale, heretofore made under an order of this court, of the said schooner Fairy, her tackle, apparel, and furniture, after deducting therefrom the amount of the charges for the wharfage and safe-keeping of the said schooner Fairy, allowed by the court, and amounting to the sum of three hundred and fifty-five $\frac{50}{100}$ dollars, being the sum of three hundred and eleven dollars ($311) be disposed of according to law.

JOHN C. WATROUS, *U. S. Judge*.

Bill of costs.

UNITED STATES
vs.
JOHN W. JOCKUSH,
J. F. BENJAMIN.
Bill of costs.

Wharfage schooner Fairy,	37 days, at	$2	- - - -	$74 00
Keeping vessel,	37 "	2½	- - - -	92 50
Advertising notice of suit	- - - -	-	- - - -	10 00
Expenses and commission on sale	- - -	-	- - - -	18 75
Clerk's fees	- - - -	-	- - - -	20 15
				$215 40

The above costs, accruing from the 28th Dec., 1847, till Feb., 1848, in account United States vs. Schooner Fairy, allowed,

WATROUS, *U. S. Judge*.

March 21*st*, 1848.

THE UNITED STATES
vs.
SCHOONER FAIRY, &c.

This day, it appearing to the court that the claim of Erich Christian Ludwig Gruner had been improperly made, and that the same had in consequence thereof been heretofore ordered by this court to be taken off the files thereof; it is now ordered and decreed, that the penalty of the stipulation bond filed on behalf of the said claimant be forfeited to the use of the libellants in the above entitled cause, and that the Unit-

ed States of America do therefore recover of and from John W. Jockusch and J. F. Benjamin, the obligors in the said stipulation bond, the amount of two hundred and fifty dollars, penalty of the same, and that an execution issue therefor; provided that this decree and judgment be satisfied by the said John W. Jockusch and J. F. Benjamin paying to the use of the United States the full amount of the costs and charges accruing in the said cause, from the time of the filing of the said claim, and allowed by this court, being two hundred and fifteen dollars and forty cents. JOHN C. WATROUS, *U. S. Judge.*

Agreement filed 31st July, 1848.

THOS. BATES, *Clerk.*

District court of the United States, district of Texas.

THE UNITED STATES vs. THE SCHOONER FAIRY, etc. } In admiralty.

In this case it is agreed by Wm. G. Hale, on the part of the United States, and Sherwood & Wagner, proctors of the claimant Gruner, that it was the fact that the reference to a master of the matters referred to in the motions on the part of the libellants of the 3d and 19th of January, 1848, was by consent waived, and the questions of law arising on the said motions were submitted directly to the court.

WILLIAM G. HALE,
Acting attorney of the U. S.
SHERWOOD & WAGNER,
Proctors for claimant Gruner.

Notice of appeal filed 25th March, 1848.

United States district court, district of Texas.

THE SCHOONER FAIRY ads. THE UNITED STATES. } In admiralty.

And now at this day, that is to say, on the twenty-fifth day of March, in this same term, in which the decree was entered in the above cause, comes the claimant, Erich Christian Ludwig Gruner, and makes appeal from the orders and final decree of the said district court to the Supreme Court of the United States, and prays that the record and entire proceedings may be certified, and a transcript of the same transmitted to the said Supreme Court of the United States, to be used on the hearing of said appeal. Dated March 25th, 1848.

SHERWOOD & WAGNER,
EBENEZER ALLEN, &
LUMAN SHERWOOD.
Proctors for claimant Gruner.

Bond filed 29th March, 1848.

THOS. BATES, *Clerk.*

United States district court, the district of Texas.

THE UNITED STATES vs. THE SCHOONER FAIRY, etc. } In admiralty.

Know all men by these presents, that we, Erich Christian Ludwig Gruner, John Wm. Jockusch, and Thomas F. McKinney, are held and firmly bound unto the United States in the penal sum of five hundred dollars, to be paid to the said United States; and for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-eight.

The condition of this obligation is such, that whereas a libel has lately been filed by the attorney of the United States for the district of Texas, in favor of the said United States, against the schooner Fairy, her tackle, apparel, and furniture, which said libel was filed in the district court of the said United States, for the district of Texas, and claiming a forfeiture of the said schooner, her tackle, apparel, and furniture; and whereas the above bounden Erich Christian Ludwig Gruner has appeared in the said court as claimant of the said schooner, her tackle, apparel, and furniture; and whereas such proceedings have been had in the said district court, that the said schooner, her tackle, apparel, and furniture, have been decreed by the said district court to be forfeited to the United States; and the said Erich Christian Ludwig Gruner, conceiving himself aggrieved by such decree, has appealed from the same to the Supreme Court of the United States.

Now, therefore, if the said Erich Christian Ludwig Gruner shall prosecute his said appeal to effect, and without delay, or, if the said appeal shall be dismissed, and the said Gruner shall pay all such damages and costs as shall be adjudged against him on such appeal, and the costs of the said district court adjudged against him in and by virtue of the said decree appealed from, then this obligation to be void, otherwise to remain in full force and virtue.

ERICH CHRISTIAN LUDWIG GRUNER,
By JOCKUSCH, FREDERICH & Co. [SEAL.]
Attys' in fact.
J. W. JOCKUSCH, [SEAL.]
THOMAS F. McKINNEY. [SEAL.]

I, John C. Watrous, judge of the district court of the United States, for the State of Texas, having examined the within bond, do approve of the sureties therein named, as well as the manner and form of its execution; and I further certify, that the penalty of the said bond is fixed by me at the sum of five hundred dollars, and that the appeal in the within entitled cause has been duly made to the Supreme Court of the United States by the claimant, Erich Christian Ludwig Gruner. Dated at Galveston, this 29th day of March, 1848.

JOHN C. WATROUS.